

The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this State, based on the tangible personal property transferred incident to sales of service. See, 35 ILCS 115/3. (This is a PLR.)

June 29, 2001

Dear Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>), is in response to your letter of May 7, 2001. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to AAA for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither AAA nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter you have stated and made inquiry as follows:

On behalf of our client, AAA, we submit this request for a private letter ruling concerning the application of the Service Use Tax ('SUT'), Service Occupation Tax ('SOT'), and Use Tax ('UT') to the particular fact pattern set forth in this ruling request. Please see the attachments to this letter which include an executed Power of Attorney and other representations as required by 86 Illinois Admin. Code Sec. 1200.110.

I. FACTS

A. Overview

AAA is a commercial printer of various types of printed materials such as magazines, periodicals, catalogs, telephone directories, financial reports, advertising supplements, and direct mail items. The items are printed to each customer's unique specifications at one of AAA's many printing facilities located both inside and outside of Illinois. Each printing facility, regardless of its location, performs the sales processing activities associated with that facility's sales within or into Illinois. Relevant sales processing activities include the receipt, approval and invoicing of orders. Most of AAA's printing facilities have a Postal Service ('PS') facility on site, which is known as a XYZ. AAA is engaged in the service of graphic arts production, as defined by Illinois statute. AAA is an Illinois registered de minimis serviceman.

B. Out-of State Transactions

The transactions on which AAA seeks this ruling are those wherein customers contract with AAA to print financial reports, direct mail advertising materials, catalogs and similar

printed materials (all of which are collectively referred to as 'catalogs' hereinafter) at one of AAA's printing facilities located outside of Illinois. These catalogs are then distributed free of charge via the PS to recipients located inside of Illinois. AAA applies addresses to the catalogs, often via inkjet, based on information contained on a tape supplied by its customers. AAA's customers take title and ownership of the catalogs at the dock of the printing facility when AAA delivers the catalogs to the PS. The PS then distributes the catalogs to the Illinois recipients based on the mailing address printed on each catalog.

II. ISSUES PRESENTED

1. Is AAA subject to the SOT on catalogs printed outside the state and mailed into Illinois by the PS?
2. Is AAA subject to the SUT on catalogs printed outside the state and mailed into Illinois by the PS?
3. Is AAA subject to Illinois Use Tax on the cost of materials incorporated into the catalogs mailed from out of the state into Illinois by the PS?

III. LEGAL ANALYSIS

The operations conducted by AAA in (AND OUTSIDE) Illinois qualify as graphic arts production. Section 3-30 of the Service Occupation Tax Act and Section 3-30 of the Service Use Tax Act define graphic arts production as 'printing, including ink jet printing, by one or more of the processes described in Groups 323110 through 323122 of Subsector 323, Groups 511110 through 511199 of Subsector 511, and Group 512230 of Subsector 512 of the North American Industry Classification System... .) 35 ILCS 115/3-30 and 35 ILCS 110/3-30. AAA prints various special order types of printed materials such as telephone directories, financial reports, direct mail items, advertising supplements and promotional catalogs.

The SOT, SUT, and UT do not apply for orders of catalogs (as defined above) that are received, approved, and invoiced at one of AAA's out-of-state printing facilities, printed at that facility, and then subsequently mailed via the PS into Illinois. Since the sales processing activities, printing and transfer of catalogs takes place outside of Illinois, these transactions are not subject to the SOT pursuant to 35 ILCS 115/3. In addition, AAA also has no obligation to collect or pay tax on these catalogs under the Illinois Service Use Tax Act or the Illinois Use Tax Act.

The SUT imposes a tax upon the 'privilege of using in this State [Illinois]...tangible personal property acquired as an incident to the purchase of a service from a serviceman....' 35 ILCS 110/3. See also Regulation 160.101(a). 'Use' as defined by Section 2 of the SUT Act is 'the exercise by any person of any right or power over tangible personal property incident to the ownership of that property [in Illinois]... .' 35 ILCS 110/2. AAA prints catalogs at one of its numerous printing facilities located outside of Illinois and contractually transfers title and ownership of those catalogs to its customers out of state. AAA relinquishes possession of those catalogs when the catalogs are transferred to the PS at AAA's shipping dock. Consequently, any right or power exercised by AAA over the catalogs ceases at the out-of-state printing facility when possession is transferred to the PS. At no time, does AAA ever exercise any right

or power over those catalogs within the State of Illinois. Therefore, AAA does not exercise a taxable 'use' of those catalogs in Illinois.

The Use Tax Act imposes a tax upon the 'the privilege of using in this State [Illinois] tangible personal property purchased at retail from a retailer...' per 35 ILCS 105/3. 'Use' as defined by 35 ILCS 105/2 is 'the exercise by any person of any right or power over tangible personal property incident to the ownership of that property...' As stated in the preceding paragraphs, AAA does not exercise any right or power over the catalogs within Illinois. Accordingly, AAA does not exercise any right or power over any of the materials incorporated into the catalogs within Illinois. Thus, AAA does not exercise a taxable 'use' of the materials in Illinois.

Illinois Private Letter Ruling ST 92-0361 provides additional support that the distribution of catalogs under a similar fact pattern does not constitute a taxable use within Illinois. The PLR states that a donor who purchases property outside Illinois and mails the property to Illinois donees from an out-of-state mail facility does not exercise any power over the property in Illinois and therefore no taxable use occurs. The ruling was issued July 7, 1992. AAA's situation is similar to the facts listed in that PLR. In AAA's case, the donor (AAA's customer) is shipping donated property (the catalogs free of charge) via the PS to Illinois donees (Illinois addresses) from an out-of-state mail facility. Therefore, based on this rationale, neither AAA nor AAA's customer exercises any right or power over the donated property within Illinois. Accordingly, no taxable use occurs within Illinois.

IV. RULINGS REQUESTED

AAA is not under any obligation to collect or pay the Illinois Service Occupation Tax or Service Use Tax on the catalogs printed at its out-of-state facilities that are subsequently distributed by the PS into Illinois.

AAA is not under any obligation to collect or pay the Illinois Use Tax on the cost of materials incorporated into the catalogs printed at its out-of-state facilities that are subsequently distributed by the PS into Illinois.

INFORMATION REQUIRED BY 2 ILL. ADM. CODE 1200.110(B)

Please see the attached addendum.

If the Department requires any additional information or have any questions regarding this Ruling request, please contact me. Thank you for your consideration in this matter.

DEPARTMENT'S RESPONSE

The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this State, based on the tangible personal property transferred incident to sales of service. See, 35 ILCS 115/3.

The information contained in your letter indicates that printing facilities at out-of-State locations accept a customer's purchase order and print the items ordered. The items printed are special order materials that your customer has requested you distribute to its recipients ("donees") in Illinois. Your letter indicates that AAA prints these materials, then transfers them to the Postal Service at locations

outside Illinois (generally, they are delivered to the Postal Service XYZ located at the printing plant). The materials are then mailed to Illinois donees.

You have asked us to rule that AAA is not obligated "to collect or pay the Illinois Service Occupation Tax or Service Use Tax on the catalogs printed at its out-of-state facilities that are subsequently distributed by the PS into Illinois," and likewise, is not "under any obligation to collect or pay the Illinois Use Tax on the cost of materials incorporated into the catalogs printed at its out-of-state facilities that are subsequently distributed by the PS into Illinois."

Application of Service Occupation Tax

Given the facts recited in your letter, we do not believe that AAA will incur any Service Occupation Tax liability on these transactions. We reach this conclusion based upon the fact that no sales of service have occurred in the State of Illinois. The facts presented indicate that the customer's purchase order is accepted by an out-of-State printing plant. The customer's order is printed at the out-of-State printing facility.

Application of Service Use Tax

Similarly, we do not believe that AAA will incur a Service Use Tax collection obligation on these sales. When a serviceman incurs a Service Occupation Tax liability, he is generally required to collect a corresponding amount of Service Use Tax from his Illinois customer. There are also instances in which a serviceman located outside of Illinois is required to collect the Service Use Tax from its Illinois customers¹. It must be remembered, however, that Service Use Tax liability is predicated upon a customer's use, in Illinois, of tangible personal property that is the subject of a sale of service. Section 2 of the Service Use Tax Act states that "'use' means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property" See, 35 ILCS 110/2. Consequently, a person makes a "use" of tangible personal property when she makes a gift of it in Illinois to another person. In the situation you have described, there is no "use" by the service customer in Illinois. The materials are "used" outside Illinois when they are placed into the Postal Service mail unit. At that point, it is our understanding that the service customer loses any ability to exercise control over the materials (e.g., to recall the materials).

Application of Use Tax

Your last question involves application of the Illinois Use Tax to these transactions. You request a ruling that AAA is not under an obligation to collect or to pay Illinois Use Tax on the cost of tangible personal property incorporated into the materials printed at the out-of-State facilities and distributed by the Postal Service into Illinois.

As you are aware, a "de minimis" serviceman may incur a Use Tax liability with respect to his sales of service. In order to be considered a "de minimis" serviceman, the serviceman's annual aggregate cost price of the tangible personal property transferred to service customers must be less than 35% (or 75% in the case of servicemen transferring prescription drugs or engaged in graphic arts production) of his total annual receipts from sales of service. This ratio is determined by the serviceman on the basis of each fiscal year. See, 86 Ill. Adm. Code 140.105. If he qualifies as de minimis, the serviceman may remit either Service Occupation Tax. or Use Tax on his cost price of the tangible personal property transferred to service customers. See, Section 140.105. The type of tax remitted depends upon the activities of the serviceman. Section 2 of the Service Occupation Tax Act provides that a sale of service made by a de minimis serviceman not otherwise required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax Act is not subject to tax under the Service Occupation Tax Act. Rather, it states that "[t]he purchase of ... tangible personal

property by the serviceman shall be subject to tax under the Retailers' Occupation Tax Act and the Use Tax Act." ² See, 35 ILCS 115/2. We assume that this is the Use Tax liability about which you are inquiring. When a serviceman elects to remit Use Tax, he is considered the end user of the tangible personal property transferred to his service customers. The serviceman, and not his customers, incurs a Use Tax liability. His customers incur no tax liability

If AAA qualifies as a de minimis serviceman and is not required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax Act, it could elect to pay Use Tax on the cost price of tangible personal property transferred incident to sales of service. However, given the above assumptions and the facts presented in your letter, we do not believe that this liability will apply. We make this determination because we cannot conclude that AAA makes an Illinois "use" of the property (e.g., paper, ink and other items which are ultimately shipped to Illinois donees from an out-of-State printing facility). Section 3 of the Use Tax Act imposes tax upon the privilege of using tangible personal property in Illinois. See, 35 ILCS 105/3. Section 2 of the Use Tax Act defines "use" as "the exercise by any person of any right or power over tangible personal property incident to ownership of that property ..." See, 35 ILCS 105/2. Under the facts you have presented, AAA does not "use" any of the tangible personal property in Illinois. The materials are printed solely outside of Illinois and are deposited into a Postal Service mail unit outside Illinois. AAA exercises no control over these materials inside the State of Illinois. Consequently, we do not believe Use Tax applies to these transactions.

I hope that this information is helpful. If you have any additional questions about this ruling, please feel free to contact me. If you have general questions regarding sales tax liabilities, please feel free to contact the Department's Taxpayer Information Division at 217-782-3336.

Very truly yours,

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Jerilynn T. Gorden
Senior Counsel, Sales & Excise Tax
Phone: 217-782-6996

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¹ This would be the case, for instance, when a serviceman located outside Illinois that is over the 35% threshold has sufficient nexus with Illinois to act as a tax collector on its Illinois deliveries.

² A de minimis serviceman that is otherwise required to be registered as a retailer under Section 2a of the Retailers' Occupation Tax Act may, by contrast, remit Service Occupation Tax on his cost price.